

REMARKS

In view of the above amendments and following remarks, the Examiner is respectfully requested to allow Claims 1-3, 9-38, and 48-55 the only claims pending and currently under examination in this application following entry of the above amendments.

Claim 1 has been amended to incorporate the subject matter of Claim 8. Consequently, Claim 8 has been cancelled. Claims 4-7 and 45-46 have also been cancelled. Claims 3, 9, 10-12, 14-20, 26-35, and 37-38 have also been amended for consistency purposes. New claims 49-55 have been added. These claims are fully supported by the specification and drawings as originally filed. See for instance, FIGS. 2 and 3. Accordingly, no new matter has been added.

As no new matter has been added by way of the amendments made herein their entry is respectfully requested.

Rejection of Claims 1-38 and 48 under 35 U.S.C. 102(e)

In the Non-final Office Action mailed August 22, 2008, the Examiner rejected claims 1 through 38 and 48 under 35 U.S.C. §102(e), as allegedly being anticipated by Bachand et al. (USPN 6,489,172). The Applicants respectfully traverse.

According to the M.P.E.P § 2131, a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. The identical invention must be shown in as complete detail as is contained in the claim.

Claim 1 has been amended. Claim 1 is directed to a test device for detecting an analyte suspected of being present in a liquid sample. The test device includes an absorbent sample applicator, for collecting a sample from a subject. The test device further includes a casing. The casing includes a top member and a bottom member, wherein the top and bottom members are removably coupled to one another. The test device additionally includes a sample application well, which is connected to the casing. A sample divider is also included. The sample divider is for dividing the sample into a first portion to be tested and a second portion to be stored or used for optional confirmation testing. The device further includes a sample reservoir for collecting the second portion of the sample for storage and optional confirmation testing. The sample reservoir is in fluid communication with the sample divider.

Accordingly, an element of claim 1 is a casing that includes a top member and a bottom member, wherein the top and bottom members are removably coupled to one another. The Applicants contend that Bachand does not anticipate the rejected claims because Bachand does not teach a casing having a top member and a bottom member, wherein the top and bottom members are removably coupled to one another. Bachand does not teach this element because at most Bachand discloses a housing and at no point in time does Bachand teach that the housing is composed of two members capable of being removably coupled to one another. Accordingly, Bachand does not teach all the elements of the rejected claims and therefore does not anticipate the claimed invention.

With respect to claims 23 and 31, each of these claims have been amended to clarify that the device includes both a sample application well and an expressor. The Office has not shown where in Bachand a device is taught which device includes both a sample application well as well as an expressor. Accordingly, Bachand does not teach all the elements of the

rejected claims and therefore does not anticipate the claimed invention.

New Claims

New claims 45 to 51 have been added. These new claims ultimately depend from claim 1 and incorporate all the elements thereof. Therefore, for the reasons set forth hereinabove, the Applicants contend the claims are patentable over the prior art.

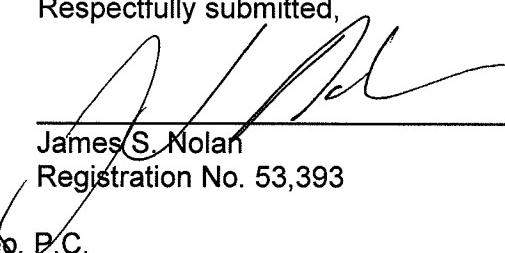
CONCLUSION

It is believed that all of the pending claims have been addressed in this paper. However, failure to address a specific rejection, issue or comment, does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above are not intended to be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

On the basis of the foregoing amendments and remarks, the Applicants respectfully submit that the pending claims are in condition for allowance. Applicant is concurrently filing herewith a Petition for a three-month extension of time with the requisite fee, authorization for a credit card payment of the filing fee is submitted herewith. No additional fees are believed to be due, however, the Commissioner is hereby authorized to charge any fees that may be due, or credit any overpayment of same, to Deposit Account No. 50-0311, Reference No. 37565-508001US. If there are any questions regarding these amendments and remarks, the Examiner is encouraged to contact the undersigned at the telephone number provided below.

Respectfully submitted,

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James S. Nolan
Registration No. 53,393

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
3580 Carmel Mountain Road
Suite 300
San Diego, CA 92130
Customer No. 64046
Tel.: 858/314-1500
Fax: 858/314-1501